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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-5744-F-02]
RIN 2502-AJ20

Federal Housing Administration (FHA): Adjustable Rate Mortgage Notification Requirements and Look-Back Period for FHA-Insured Single Family Mortgages

AGENCY: Office of the Assistant Secretary for Housing ☐ Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule revises FHA's regulations governing its single family adjustable rate mortgage (ARM) program to align FHA interest rate adjustment and notification regulations with the requirements for notifying mortgagors of ARM adjustments, as required by the regulations implementing the Truth in Lending Act (TILA), as recently revised by the Consumer Financial Protection Bureau (CFPB). The final rule requires that an interest rate adjustment resulting in a corresponding change to the mortgagor's monthly payment for an ARM have a 45-day look-back period. The final rule also requires that the mortgagee of an FHA-insured ARM comply with the disclosure and notification requirements of the 2013 TILA Servicing Rule, including at least a 60-day but no more than 120 day advance notice of an adjustment to a mortgagor's monthly payment.

DATES: Effective Date: January 10, 2015.

FOR FURTHER INFORMATION CONTACT: Patricia J. McClung, Acting Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9278, Washington, DC 20410; telephone number 202-

708-3175 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION

I. Background-the May 8, 2014 Proposed Rule

On May 8, 2014, HUD published a proposed rule in the Federal Register, at 79 FR 26376, to revise the look-back period for an FHA-insured ARM from 30 to 45 days, and to require that the mortgagee of an FHA-insured ARM provide at least a 60-day, but no more than 120 day, advance notice of an adjustment to a mortgagor's monthly payment. This change was in response to the final rule of the "Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)"¹ published as a final rule on February 14, 2013 in the Federal Register at 78 FR 10902. This February 2013 final rule, referred to in this preamble as the 2013 TILA Servicing Rule, set the ARM adjustment notice requirement to a period of between 60 days (minimum) and 120 days (maximum) before the newly adjusted payment is due. Additionally, the 2013 TILA Servicing Rule established 45 days as the minimum ARM look-back period.

HUD's May 8, 2014, rule proposed to revise the regulations in 24 CFR 203.49 to establish a 45-day look-back period for an FHA-insured ARM, and to require that the mortgagee of an FHA-insured ARM provide at least a 60-day, but no more than 120 day, advance notice of an adjustment to a mortgagor's monthly payment, in conformance with the CFPB's regulations. In the preamble to the 2013 TILA Servicing Rule, the CFPB stated that FHA's current 30-day look-back period did not provide sufficient time to notify the mortgagor of an interest rate and monthly payment adjustment. To allow HUD sufficient time to comply with the notification requirements of the 2013 TILA Servicing Rule, the CFPB delayed the effective date of the

¹ The CFPB initially published the rule on its website: <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>.

notification requirements in the 2013 TILA Servicing Rule to January 10, 2015, for ARMs insured by FHA with a 30-day look-back period. Therefore, FHA-insured ARMs originated on or after January 10, 2015, must comply with the new notification requirements of the 2013 TILA Servicing Rule.

II. This Final Rule

This final rule follows publication of the May 8, 2014, proposed rule and adopts that proposed rule without change. The public comment period for the proposed rule closed on June 9, 2014, and HUD received 9 public comments. While HUD received 9 public comments on this rule, only 6 of the comments pertained to HUD's rule. With respect to the other 3 comments, two were general comments on the state of the housing market. The remaining comment pertains to another agency's rule and was inadvertently submitted to the rulemaking docket for HUD's rule. Section III of this preamble discusses the comments received on the proposed rule.

III. Discussion of Public Comments Received on May 8, 2014, Proposed Rule

The public commenters included mortgage lenders, industry trade associations, and individuals. Commenters were generally supportive of HUD's proposal to change the look-back period and notification requirements on FHA-insured ARMs.

Comment: Change effective date of proposed rule and implement as soon as possible. A commenter requested that HUD implement the rule as soon as practicable to better provide clarity and certainty to the mortgage industry. The commenter stated that it will need to implement the proposed change ahead of a possible effective date due to the technological and procedural changes necessary for implementation.

HUD Response: HUD appreciates the industry's support of this rule and desire for a quick implementation. FHA's policy change regarding the look-back period must be in effect by

January 10, 2015 in order to be in compliance with the 2013 TILA Servicing Rule. To ensure uniformity for Ginnie Mae issuers, HUD is using the CFPB end date of January 10, 2015.

Comment: Final rule should explicitly state it applies only to forward mortgages. A commenter requested that the rule be amended to clearly document that this change is only applicable to “forward” FHA single family mortgages.

HUD Response: HUD appreciates the commenters point, and notes that the proposed regulatory text in § 203.49(d)(2) explicitly referred to “forward mortgages” in reference to the 45 day look-back period. HUD is adopting the proposed regulatory text.

Comment: Proposed rule is silent on borrower initiated rate reset. A commenter identified that FHA’s proposed rule, as well as the CFPB’s 2013 TILA Servicing Rule, are both silent on the potential for a borrower initiated rate reset, which the commenter stated is a feature currently offered in the market and gaining market acceptance. The commenter recommended that language be included in the final rule that the rule only applies to lender/servicer/creditor initiated rate resets and carves out borrower initiated rate resets from being subject to the proposed 60-120 day advanced notice of adjustment.

HUD Response: HUD appreciates the commenter providing information about this mortgage product. However, HUD does not have the authority to exempt lenders offering this mortgage product from the minimum ARM notification requirements set forth in the CFPB’s 2013 TILA Servicing Rule. HUD defers to the CFPB to make a determination on this issue. At this time, FHA insures ARMs that are adjusted at a set fixed interval by the mortgagee.

Comment: Against any type of regulatory change to FHA. A commenter expressed opposition to any type of change to FHA. In the commenter’s opinion, the old rules related to Real Estate Settlement Procedures Act (RESPA) and TILA were fine, and the new CFPB

regulation is “backward and confusing” compared to the old good faith estimate that had all the charges detailed.

HUD Response: The passage of The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, approved July 21, 2010) (Dodd-Frank), transferred oversight and responsibility of RESPA and TILA to the CFPB. Following passage of Dodd-Frank, the CFPB revised Regulation Z in the 2013 TILA Servicing Rule, and changed the periods for advance notice of rate adjustments. Since FHA’s look-back period notification requirement were inconsistent with the 2013 TILA Servicing Rule requirements as published in January of 2013, mortgagees originating loans insured by FHA and VA had until January 10, 2015 to comply the 2013 TILA Servicing Rule requirements. Therefore, this final rule is necessary to ensure that FHA-insured mortgages are in compliance with the 2013 TILA Servicing Rule.

IV. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider

regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

As discussed above in this preamble, this final rule aligns the look-back requirements for FHA-insured ARMs to the revised TILA notification requirements established in the 2013 TILA Servicing Rule. Since this final rule adopts without amendment the proposed rule, which was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, there is no further review by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As discussed in this preamble, this final rule aligns the look-back requirements for FHA-insured ARMs to the revised TILA notification requirements established in the 2013 TILA Servicing Rule. HUD does not have the discretion not to align its ARM notification requirements with new TILA requirements established by the CFPB as implemented by the CFPB in its 2013 TILA Servicing Rule. The revised look-back period and disclosure requirements would apply to FHA-approved mortgagees originating ARMs in January 2015, whether or not HUD takes action. It is HUD's position that it is important for FHA regulations to be in compliance with TILA, and therefore HUD has initiated this rulemaking. In this rule, HUD adopted the minimum look-back period, 45 days, which would allow FHA-approved mortgagees to meet the TILA minimum requirements governing notification to borrowers.

As the CFPB noted in its rulemaking, that the majority of ARMs in the conventional market have look-back periods of 45 days or longer. With the 2013 TILA Servicing Rule having taken effect on January 10, 2014, any lenders originating in the conventional market ARMs that did not have a minimum look-back period of 45 days, have now adjusted to the new TILA requirements.

As with the amendments to the look-back period, the revisions to the disclosure requirements simply conform HUD requirements to the 2013 TILA Servicing Rule and the procedures currently followed in the conventional mortgage lending market.

For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule would not have federalism implications and would not impose substantial

direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance-Homes is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in this preamble, HUD amends 24 CFR part 203 as follows:

PART 203 – SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z-16, 1715u, and 1717z-21; 42 U.S.C. 3535(d).

2. In §203.49, revise the third sentence of paragraph (d)(2) and paragraph (h) to read as follows:

§203.49 Eligibility of adjustable rate mortgages.

* * * *

(d) * *

(2) * * * The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment, except that for forward mortgages originated on or after January 10, 2015, 30 days shall mean 45 days.

* * * *

(h) Disclosures. The mortgagee of an adjustable rate mortgage shall provide mortgagors with the disclosures in the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 et seq.) at 12 CFR 1026.20(c) and (d).

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Dated: August 20, 2014

Carol J. Galante
Assistant Secretary for Housing—Federal
Housing Commissioner